IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 11TH JUNE 2007 / 21ST JYAISHTA 1929

MFA.No. 1323 of 2000(A)

OP(MV.)604/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA DT.27.4.2000.
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APPELLANTS: APPELLANTS
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1. **ANANDAVALLY AMMA, AGED 44, W/O.MURALEEDHARAN NAIR, SREENILAYAM, BLOCK NO.177, EX-SERVICEMEN COLONY, VECHOOCHIRA P.O., RANNY.**

2. **SALINI, D/O.MURALEEDHARAN NAIR, AGED 22 YEARS, RESIDING AT SREENILAYAM, BLOCKNO.177, EX-SERVICEMEN COLONY, VECHOOCHIRA P.O., RANNY**

3. **SHYLAJA, D/O.MURALEEDHARAN NAIR, AGED 19, RESIDING AT SREENILAYAM, BLOCK NO.177, EX-SERVICEMEN COLONY, VECHOOCHIRA P.O., RANNY.**

4. **RAMAKRISHNAN PILLAY, AGED 82, RESIDING AT SREENILAYAM, BLOCK NO.177, EX- SERVICEMEN COLONY, VECHOOCHIRA P.O. RANNY.**

BY ADV. SRI.K.JAJU BABU

RESPONDENTS: RESPONDENTS
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1. **V.S.TOMY, VELIYATHIL HOUSE, CHITTADI, VANDAZHY, PALGHAT.**

M.F.A. NO.1323/2000

2. VIJAYAKUMAR, S/O.KRISHNAN NAIR, CHAKKUNGAL VEEDU, ANJUMANNOORTHY KARA, VADAKKUMCHERRY VILLAGE, PALGHAT DISTRICT.

3. THE ORIENTAL INSURANCE CO.LTD., SOBHA T.S.M. COMPLEX, 1ST FLOOR, V.H.ROAD, PALAKKAD.

4. P.A.EBRAHIM RAWTHER, PALIKKAL VEEDU, VECHOOCHIRA P.O., PATHANAMTHITTA.

5. THE ORIENTAL INSURANCE CO.LTD., SHAAM COMPLEX , IST FLOOR, BAZAR ROAD, MATTANCHERRY, COCHIN 2.

BY ADV. SRI.P.V.JYOTHI PRASAD
SRI.S.SANTOSH KUMAR (PERUNAD)

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 11/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A. No. 1323 of 2000

Dated this the 11th day of June, 2007

Judgment

Koshy, J.

Dependents of a motor accident victim filed application for compensation amounting to Rs. Four lakhs. According to the claimants, deceased was driving a lorry bearing registration No. KL/3B 639 and a car bearing registration No. KL/9B 6959 came from the opposite direction hit the lorry. The lorry also overturned. Driver of the lorry died in the hospital. Claimants are the dependents of the lorry driver. According to them, he was aged 49 and was earning Rs.3,500/- per month. The tribunal found that even though the car driver was negligent, the lorry driver was negligent by 30%. Therefore, after calculating the compensation 30% was deducted for contributory negligence. The compensation awarded was only Rs.1,59,460/-. Quantum of compensation as well as finding of contributory negligence is disputed herein.

2. PW2 is an occurrence witness. He was the cleaner of the ill-fated lorry. The lorry driven by the deceased was proceeding from South to North along the Koothattukulam - Muvattupuzha M.C. road. A car was coming from the opposite direction and it hit against the lorry. The deceased applied sudden brake and the lorry overturned. PW2 has stated that the accident occurred due to the hitting of the lorry and car was in the wrong side. The lorry was proceeding along the western side (correct side) and was proceeding on the western side leaving no space in between and the accident occurred on the western side as the car, which has to go by the eastern side, was completely in the wrong side. Ext.A1 FIR was registered against the car driver. Ext.A2 is the scene mahazar. The accident spot was 2.44 metres towards east from the western tar end. The road has 7.06 metres width. Hence, as per the scene mahazar, the lorry was on the western side (correct side) when the accident occurred. The lorry loaded with wooden logs overturned and when the car hit the lorry, sudden brake was applied. The car was on the extreme wrong side is very clear from the scene mahazar. The car driver who is

expected to proceed along the eastern side had deviated to the western side resulting in hitting the lorry. The car driver was found to be negligent by the investigating agency as can be seen from Ext.A5 charge sheet. The tribunal did not rely on the same, but, assumed that the lorry might have overloaded and there were damages to the lorry on the left side also and awarded 30% negligence on the deceased driver. We are of the view that since the car was on the wrong side and police charge-sheeted and on the basis of the evidence of PW2, the only finding possible is that the lorry driver was not negligent. It was coming in the right side (western side). The car was completely in the wrong side. It hit on the wrong side and, therefore, finding of contributory negligence cannot be accepted. Even though claimant submitted that he was aged 49, postmortem certificate shows that he was aged 50. Tribunal has fixed 11 as the multiplier as in the second schedule multiplier for persons aged between 50 and 55 is 11. We see no ground to enhance the same.

3. With regard to earnings, tribunal has taken only Rs.2,100/- as the monthly income. He was a heavy

vehicle driver with proper licence. Accident occurred on 28.1.1998. It was contended that a heavy vehicle driver will get at least Rs.200/- per day in 1998 and assessment of monthly income was very low. We are of the opinion that at least Rs.2,700/- ought to have been taken as the monthly income. After deducting one-third, balance family contribution would be Rs.1,800/-. If that be so, compensation payable for loss of dependency will be Rs.1800 x 12 x 11 = Rs.2,37,600/-, but, tribunal has calculated loss of dependency at Rs.1,84,800/-. Therefore, additional compensation payable for loss of dependency will be Rs.52,800/-. Total compensation awarded by the tribunal was Rs.2,27,800/-. So, when Rs.52,800/- is added, total compensation payable will be Rs.2,80,600/-. After deducting 30%, tribunal has awarded only Rs.1,59,460/-. Hence, balance compensation payable will be Rs.1,21,140/-. The above Rs.1,21,140/- should be deposited by the third respondent insurance company which insured the car with 7% interest from the date of application till its deposit. From the additional compensation, fourth appellant father is entitled to

withdraw Rs.15,000/- and balance shall be withdrawn in equal proportion by appellants 1 to 3.

Appeal is allowed partly.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A.NO.1323/200

JUDGMENT

Dated:11th June, 2007